

Board of Adjustment
PO Box 120
Town of Fremont, New Hampshire 03044
Minutes of May 23, 2006
Approved June 20, 2006

Members present: Co-chairman Jack Baker, Members Doug Andrew, Scott Boisvert, Brett Hunter and Secretary Meredith Bolduc.

Mr. Baker called the meeting to order at 7:30 p.m. then called the roll.

MINUTES

Mr. Boisvert made the motion to accept the April 25, 2006 meeting minutes as written. Motion seconded by Mr. Hunter with unanimous favorable vote.

IRON WHEEL, INC.
Map 7 Lot 117
Rehearing request

The Board members present, Mr. Baker, Mr. Andrew, Mr. Boisvert and Mr. Hunter reviewed a Limited Request for Rehearing of Case # 06-002 from Christopher L. Boldt, Esquire for Iron Wheel, Inc., Map 7 Lot 117, Bean Road and Bruce Avenue, relative to the April 11, 2006 Fremont Zoning Board of Adjustment decision of denial of Iron Wheel, Inc.'s request for a Variance to be allowed to subdivide its 4.63 acre parcel into 2 lots thus creating a 2.53 acre lot and a 2.10 acre lot in the Aquifer Protection District which requires 3 acres per lot. This request was received via e-mail on May 3, 2006.

The applicant asserts that the decision was unlawful and unreasonable; and respectfully requested a rehearing of this Case, limited to the items which the Board voted against, specifically criteria Items 3b (Area Variance), 4, and 5, and the overall vote against the Variance.

In the request the applicant contends;

1. Criteria Item 3b – Whether the Benefit Sought Cannot be Achieved by Some Other Method Reasonable Feasible to Pursue Other than an Area Variance;

The Board misapplied the law in ruling that the Applicant did not satisfy the “unnecessary hardship” condition found in Item 3B. The Board acted unlawfully and unreasonable when it voted against the Applicant on this criteria. Two of the members voted against this item because of their view that denial of the Variance would not interfere with the Applicant’s reasonable use of the property and the other two members did not use an appropriate standard when voting against the Applicant as one felt that the Applicant did not prove unnecessary financial hardship and the other felt that the ordinance should be upheld.

2. Criteria Item 4 – Whether Granting the Variance Would Do Substantial Justice;

The three members of the Board who voted in the negative on this criteria Item acted unreasonable and unlawfully in ruling that granting this Area Variance would not do substantial justice because two of the votes were based on stated reasons that justice would be better served by complying with the strict terms of the Ordinance and the third negative vote was based on the belief that denial would not be an injustice.

3. Criteria Item 5 – Whether Granting the Variance is Consistent with the Spirit of the Ordinance:

The two members of the Board who voted against the Applicant on this Criteria Item acted unreasonable in ruling that the Variance would be contrary to the spirit of the Ordinance because one members stated reason was that the spirit of the ordinance was to increase lot size to protect the Aquifer, while the other member's reason was the stated belief that 2 single family dwellings would not be better to protect and preserve and maintain the town's groundwater supply compared to a multi-family dwelling.

EXHIBIT A: The applicant submitted a May 2, 2006 letter from James M. Lavelle, LLS, attesting to the NHDES flow requirements for septic systems based on water usage and the relative impacts of water usage and septic output.

The Board members present reviewed the applicant's request for rehearing and contentions and Exhibit A as submitted. The Board also reviewed the February 28 and April 11, 2006 minutes pertaining to the Iron Wheel, Inc. request for a Variance to the terms of Article XI Section E-1 to allow a two (2) lot subdivision within the Aquifer Protection District without minimum lot size requirement, for property located at Bean Road and Bruce Avenue, Map 7 Lot 117, as well as the Fremont Zoning Board of Adjustment's decision to deny the request and the Notice of Decision which follows:

Notice of Decision:

You are hereby notified that at the April 11, 2006 portion of the duly noticed Public Hearing, the Fremont Zoning Board of Adjustment did unanimously vote to deny the request of Iron Wheel, Inc. for an Area Variance to the terms of Article XI Section E-1 to allow a two (2) lot subdivision within the Aquifer Protection District without minimum lot size requirement, for property located at Bean Road and Bruce Avenue, Map 7 Lot 117.

RESOLVED:

Based on the information presented and as the result of the Boards vote on the five conditions, the Fremont Zoning Board of Adjustment did unanimously deny the requested Area Variance for Iron Wheel, Inc. for the above referenced property, and did rule the following:

- (1) The proposal would not diminish surrounding property values,*
- (2) Granting the Variance would be of benefit to the public interest,*
- (3) Denial of the Variance would result in unnecessary hardship to the owner because:*
 - (a) special conditions of the property make an Area Variance necessary in order to allow the development as designed.*

Denial of the Variance would result in unnecessary hardship to the owner because:

- (b) the benefit sought can be achieved by some other method reasonable feasible to pursue, other than an Area Variance.*
(4) Granting the Variance would not do substantial justice,
(5) The use is contrary to the spirit of the ordinance.

The result of a consensus of the Members of the Fremont Zoning Board of Adjustment, as called for by Mr. Baker, was that the April 11, 2006 decision stands; to deny the request of Iron Wheel, Inc. for an Area Variance to the terms of Article XI Section E-1 to allow a two (2) lot subdivision within the Aquifer Protection District without minimum lot size requirement, for property located at Bean Road and Bruce Avenue, Map 7 Lot 117.

Mr. Baker called for an individual vote of the Members of whether to grant the Limited Request for Rehearing of Case # 06-002. After careful consideration, the Board members voted as follows:

Vote:

Mr. Baker	no
Mr. Boisvert	no
Mr. Andrew	no
Mr. Hunter	no

Mr. Baker made the motion that, based on the results of the consensus of the members of the Fremont Zoning Board of Adjustment that they are firm in their decisions made at the April 11, 2006 Public Hearing relative to case # 06-002, and their individual vote, the request of Iron Wheel, Inc., Map 7 Lot 117, for rehearing of case # 06-002 be denied. Motion seconded by Mr. Boisvert with unanimous favorable vote.

The applicant will be immediately notified of this decision.

SHAWN SENTER
Map 3 Lot 169-59-18

The Board received an April 26, 2006 report from Richard Bond, CSS, CWS, with Rockingham County Conservation District relative to the wetland impact of the proposed roadway placement for the Shawn Senter (Map 3 Lot 169-59-18) subdivision. Mr. Bond stated in the report that "No wetlands are impacted by this proposal, only the wetland buffer. Based on a brief site visit and review of the data available it is my conclusion that the impacts to the wetland and buffer, have been minimized as much as possible, therefore, I recommend the approval of this request for a Special Exception., which was a condition of the recently approved Special Exception".

The Board agreed that this report is sufficient to fulfill the condition of the approval.

CAPITAL IMPROVEMENTS PROGRAM

The Board received a May 4, 2006 correspondence from the Planning Board relating that they are in the process of updating the CIP and inviting the Board to a June 21, 2006 round-table work session relative to any anticipated capital improvements. There was also a CIP "Project Worksheet and Submission Form" to be completed and returned to the Planning Board. It was agreed that the ZBA would not have any capital improvement requests and Mr. Boisvert so noted on the form.

ZONING REGULATIONS

There was a general conversation relative to how the zoning regulations have been applied to properties in the past.

Mr. Baker made the motion to adjourn 8:45 p.m.

Motion seconded by Mr. Andrew with unanimous favorable vote.

Respectfully submitted,

Meredith Bolduc, Secretary